10. Abolition of Capital Punishment.

Mr. V. K. Krishnankutty *(Anthikad).*—"*This Council recommends to the Government to abolish capital sentence as a punishment for the offence of murder and substitute imprisonment for life instead.*"

Sir, the above resolution that I am moving recommends a radical change in the administration of criminal justice of this State. And as such I shall endeavour as much as possible to make out a definite case for the proposed change. This involves the discussion of the theories of punishment and how far the death sentence now prevalent will satisfy that test. The main purpose of the sentence of death is to deter persons from committing the offence. As a deterrent punishment the experience of the countries all over the world and of Cochin as well is that it has not acted as a deterrent for criminals. It has not acted as a deterrent in any of the countries. But when we think deeper we will find that this is the only punishment in the Penal Code which is of a retributive nature, of a punitive nature which seeks to put into practice the barbaric theory of an eye for an eye, a tooth for a tooth.

Now let us see whether by abolishing the death sentence there is an increase in the number of murder of cases in the abolitionist countries. As far as Cochin is concerned in answer to a question which I put during the Budget session it was said that capital sentence was last administered in 1105 and there has been no change thereafter or no increase in the number of murder cases on that account. That is also the case in all the countries where the death sentence has been abolished as a punishment for murder. I shall enumerate some of the Governments which have abolished death sentences as a punishment for murder. For the information of this House I shall give a small list of the countries in which it has been given up. Austria has abolished death sentence in the year 1919. Norway abolished it in 1905. Portugal in 1867. Sweeden in 1921, Queensland in Australia in 1922. Germany abolished it in 1928, but it has been revived by Hitler for political reasons. In Belgium there has been no execution since 1863, in Denmark there has been no execution since 1892, in Finland no execution after 1826, in Holland no execution after 1860. In Itlay no execution has been witnessed after 1889, but it was revived by Mussolini again for political purposes. The experience of these countries in which as I stated

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death sentence has been abolished is that there has been absolutely no increase of the number of murder cases on that count. On the other hand when a discussion of the matter took place in the House of Commons and when a committee was appointed for the purpose, many of the representatives of the countries where death sentence has been abolished were examined and the evidence given goes to show that their experience was that after the abolition of death sentence the crime of murder has not been increased and in some countries there is a decrease, on the other hand, of the number of murder cases.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—What was the report of the Committee?

Mr. V. K. Krishnankutty (*Anthikad).*—The report was that the death sentence should be abolished. But unfortunately the Government did not accept that recommendation.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—Are you sure?

Mr. V. K. Krishnankutty *(Anthikkad).*—I am more than sure. Are you sure that it is otherwise?

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—I am sure.

Mr. V. K. Krishnankutty (*Anthikad).*—We shall see. I think I am correct and the Hon'ble Member is at liberty to prove otherwise.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—It was not a parliamentary committee.

Mr. V. K. Krishnankutty *(Anthikad).*—The Committee after examining the representatives of the various countries of the continent came to the conclusion that the method of inculcating respect for sanctity of life is not to take life by the hand of law, but to award a different sentence altogether. Now judging from that standard we find that the abolition of death sentence does not stand in the way and moreover taking the standard of the murderer, the circumstances under which murder is committed and the standard of education of the convicts we find that illiteracy is the main factor which takes away their self control when they are irritated. They cannot be self-contained as the educated persons when a quarrel takes place, etc.,

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and especially when illiteracy for which the Government is responsible is the cause for committing murders then the Government is not at all justified in taking lives in cold-blood in the name of law. When a question was put in this House it was stated that the murders often take place in the heat of quarrel, etc. I refer to page 151 where the Commissioner of Police stated that most of the cases are committed by casuals in the heat of moment. In this view of the matter also Cochin is different from western countries where many murders are committed, not due to any quarrel or in the heat of passion, but for enriching a murderer. For example there was a case where a step-mother murdered a step-daughter in order to get the insurance amount. In another case a husband was murdered by the prisoner in order to marry his wife. Such things take place in western countries whereas in Cochin the main cause seems to be poverty, ignorance and drunkenness. And in all these cases the Government can render help by taking away this illiteracy and such other causes. That is the difference between the murders committed in India as a whole and in the western countries.

Moreover there is another aspect with regard to the execution of death sentence. When once death sentence is executed there is no retracting from it. In all cases it may not be true that the accused committed the offence. If it turns out afterwards that the person convicted and hanged did not really commit that offence then it is the most serious sin that the Government can do. Again it has been a matter of experience that perjury, though not rampant in eastern countries is still prevalent, and persons are not wanting who may swear away the life of a fellow citizen. Considering all these circumstances my submission is that death sentence should be abolished as a punishment for murder and imprisonment for life be accepted instead. In practice our courts of law have been advancing towards that position and death sentence is not usually awarded and it is all the more reason that such an advancement should be shown by our statute as well. I commend this resolution for the acceptance of this House.

Mr. P. Kumaran Ezhuthassan *(Wadakkancheri)*.—I second it.

* **Mr. M. Sivarama Menon** *(Ernakulam South)*.—Sir, I oppose this resolution. I should not be understood as being a cruel man for opposing this motion which has got the tie of

* Speech not corrected by the Hon'ble Member.

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humanity on itself. If you consider the life of A as precious as the life of B then murders would not take place in civilised countries also because where there is a high percentage of literacy and persons are occupying a standard of life which is far more advanced and superior than ourselves then we have to consider whether the total abolition of Death punishment is a thing which is desirable in the interest of the people as a whole. If there is not at least the fear that he may lose his life, I honestly think that it will be putting a premium upon murders. The courts of our State are even labouring to find out certain extenuating circumstances to see that the extreme penalty of law is not awarded and I feel in certain cases the courts even go out of the way. But there is always this fear in the mind of the prisoner. It is that fear in the mind of individuals that will act as a corrective to their own passions. Therefore there is absolutely no danger in keeping the death sentence there as long as we find that there are several causes of provocation. We cannot say far a moment that in our State a sentence of death has really been awarded where that prisoner did not deserve it. Suppose a man deliberately takes away the life of another individual upon whom depends many other souls. If such a man is to have the consolation that even if he commits murder he will be able to live in the Central Jail till the end of his life I do not think for a moment that in the name of humanity such a law would be justified, so that what I say is if there are facts upon which we can try to show that this sentence of death for cases of murder is invariably awarded by our courts in spite of the fact that certain extenuating circumstances may exist then there may be a good ground for such a step. As I said before, our Judges are always trying to find out some extenuating circumstances so as to inflict the lesser punishment. I say my own view is that this sword must hang upon the head of every individual. Drunkenness by itself is no excuse for murder. But when there is a sufficient cause for provocation certainly the lesser the punishment awarded. There are ever so many decisions to show that in such and such cases it will not be in the interests of justice to award the death penalty. If we take away this provision, the fear that in the case of deliberate murder the murderer will have to compensate by paying his own life will be taken away. Our courts will be forced to inflict this extreme penalty only in very extreme cases. Suppose for the sake of his money the trigger is pulled and the man is killed. Should he also be treated as a person who had sufficient cause for provocation, starts a quarrel and in the

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heat of the quarrel he commits an act which results in the death of the adversary? Now this resolution as it stands makes no distinction between deliberate murder and any other kind of murder. They are only twins practically and the distinction is very little. And it is very difficult also in cases where there is no strong evidence to say that it is not deliberate murder. We find as a matter of fact that there has been no case of hanging in our State except one in 1105. We cannot say taking blood for blood is highly inhuman and therefore abolish it. After all there may be only very few cases where such questions may arise. My own view is there may be persons who honestly think that even if they commit an offence they can escape from law by engaging good defence counsels. One who has got intimate knowledge of the condition of the criminal mind, I think, will have to agree with that view. If that fear of punishment is taken away it ts really dangerous for the life and safety of the public at large. We are not to be carried in this respect by sentiments. Unless there is at least this fear we will be treading on dangerous grounds. Even though this extreme penalty exists we find as a matter of fact it is being equitably administered and therefore the time has not yet come when this penal provision ought to be entirely abolished from the Statute Book.

Mr. A. V. Moothedan (*Chalakkudi*).—May I know whether the Cochin Government have the powers to amend the Penal Code?

Mr. Thomas Manjuran (*Government Advocate and Law Officer*).—Oh Yes, we can pass any law.

മിസ്റ്റർ കെ. അയ്യപ്പൻ (*Ezhuvas South*).— സർ, നിയമജ്ഞന്മാർ അഭിപ്രായം പറയേണ്ട ഒരു വിഷയമാണിത്. പിന്നെ സൈക്കോളജിസ്റ്റിനും വല്ലതും പറയാനുണ്ടാകും. ഇതു രണ്ടുമല്ലാത്ത ഞാൻ വളരെ പ്രയാസമേറിയ ഈ വിഷയത്തെക്കുറിച്ചു കേവലം കോമൺസെൻസ് മാത്രം വച്ചുകൊണ്ടാണ് പറയുന്നത്. ബഹുമാനപ്പെട്ട ഏറണാകുളംമെമ്പർ ക്യാപിറൽ സെൻറൻസിനെ അബോളിഷ് ചെയ്യണമെന്നു പറഞ്ഞതു് അതിന്റെ തത്വം മനസിലാക്കാതെയാണ്. കുറെ ആളുകളെ കൊല്ലാതിരിക്കുവാൻ മാത്രമല്ല ഇതു മാറണമെന്നു പറയുന്നത്. ഘാതകൻ ഒരുത്തനെ കൊല്ലുന്നതും സ്റ്റേറു ഒരുത്തനെക്കൊല്ലുന്നതും തമ്മിൽ വളരെ വ്യത്യാസമുണ്ട്. ഘാതകൻ ഒരാളെ കൊല്ലുന്നതുപോലെ സ്റ്റേറു ഒരാളെ കൊല്ലാൻ പാടില്ല പരിഷ്കൃതലോകവും പരിഷ്കൃതമതവും വിവരിക്കുന്ന ധാർമ്മികതത്വം സ്റ്റേറു ഒ

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രാളെ കൊല്ലുന്നതിനെ വിരോധിക്കുന്നു. അതുകൊണ്ടാണ് ഈ ശിക്ഷ നിറുത്തലാക്കണമെന്നു പറയുന്നതു്. ഒരുത്തനെ കൊന്നാൽ കൊല്ലുന്നവനേയും കൊല്ലണമെന്നു പറയുന്നതു് ശരിയാണെന്നു എനിക്കു തോന്നുന്നില്ല. ഇന്നലെ ഞാൻ ആലപ്പുഴയിൽനിന്നും വരുമ്പോൾ വഴിക്കുവെച്ചു ഒരു വർത്തമാനമറിഞ്ഞു. ഒരാൾ അയാളുടെ ഭാര്യയെ കൊന്നിട്ടു വിവരം പോലീസിൽചെന്നു അറിവുകൊടുത്തു. അതായതു പ്രായോഗികമായിട്ടു പറയുകയാണെങ്കിൽ അയാൾ ചാകുവാൻ ഒരുങ്ങിക്കൊണ്ടു ഭാര്യയെ ക്കൊന്നു എന്നാണതിന്റെ അർത്ഥം കൊല്ലുവാൻ നിശ്ചയിച്ചവൻ ചാകുവാനുംകൂടി ഒരുങ്ങുന്നുണ്ടു്. ഭേഷ്യം വരുമ്പോൾ താൽക്കാലികമായ വികാരാവേശംകൊണ്ടു ചിലർ ചാകുവാനൊരുങ്ങുന്നുണ്ടു്. അതുകൊണ്ടു ആവാങ്ങളൊന്നും ഈ സംഗതിയിൽ എടുക്കേണ്ട ആവശ്യമില്ല. കൊല്ലുവാൻ സ്റ്റേറിനെ അനുവദിക്കയാണെന്നുണ്ടെങ്കിൽ ഘ്ലാതകർ കുറയുമെന്നാണ് ഇവരുടെ വാദം. അതായതു ഒരാളെ കൊന്നുകഴിഞ്ഞാൽ അയാളുടെ ഘ്ലാതകനും കൊല്ലപ്പെടുമെല്ലൊ എന്നു ഭയന്നു ആ ഘ്ലാതകൻ കൊല്ലാതിരിക്കുമെന്നാണു പറയുന്നതു്. ഒരു വ്യക്തിയിൽ ഇങ്ങിനെ വരുന്ന ഭയത്തിന്റെ വാസന തൽക്കാലമുണ്ടാകുന്ന വികാരങ്ങളെ ജയിക്കത്തക്ക നിലയിൽ ശമനമായിരിക്കുമെന്നു സ്ഥാപിച്ചാൽമാത്രമേ ഈ വാദത്തിനു വിലയുള്ളൂ. കൊലപാതകം അവിവേകംകൊണ്ടുണ്ടാകുന്നുണ്ടു്; തൽക്കാലമുണ്ടാകുന്ന ക്ഷോഭം കൊണ്ടും ഉണ്ടാകുന്നുണ്ടു്. അതുകൊണ്ടു വധശിക്ഷ കൊലപാതകം നടത്താതിരിക്കുന്നുള്ള ഒരു മാർഗ്ഗമായിത്തീരുന്നു എന്ന ഉദ്ദേശത്തോടുകൂടി ഇപ്പോഴത്തെ നിയമം വച്ചുകൊണ്ടിരുന്നിട്ടു കാര്യമില്ല.

പിന്നെ എറണാകുളംമെമ്പർതന്നെ ഇതിന്റെ കീഴെ ഒളിഞ്ഞുകിടക്കുന്ന ഒരു രഹസ്യം പറഞ്ഞു. അദ്ദേഹം പറഞ്ഞതു നമ്മുടെ കോടതിതന്നെ നിവൃത്തിയുണ്ടെങ്കിൽ ഈ പണിഷ്മെന്റു കൊടുക്കാതിരിക്കുവാൻ ശ്രമിക്കുമെന്നു്. ഈ നിയമം വെച്ചുകൊണ്ടിരുന്നാൽ ജഡ്ജിമാരും ഭീരുക്കളായിത്തീരുന്നു എന്നു വരുന്നു. ഭയമൊന്നും ജഡ്ജിമാർക്കു പാടില്ല. അവർ നിയമം ശരിയ്ക്കു പരിപാലിക്കണം. ഭാഗ്യവശാൽ നമ്മുടെയിടയിലുള്ള ജഡ്ജിമാർക്കു കൊല്ലുന്നതു ഭീരുക്കളാണെന്നുള്ള ഒരു മനസ്ഥിതി നിലകൊള്ളുന്നുണ്ടു്. അതിനെ പാലിക്കുവാൻവേണ്ടി നല്ല ജഡ്ജിമാരും ഭീരുക്കളായാകുന്നു. അതായതു മരണശിക്ഷക്കു വിധിക്കേണ്ട കുറ്റത്തിനു അവരുടെ മനസ്സിന്റെ മാർദ്ദവത്താൽ അവർ നിയമത്തെതന്നെ കൊലപാതകം ചെയ്യുന്നു. ഈ വിഷമം എന്തിനുണ്ടാക്കുന്നു? കൊല്ലാമെന്നുള്ള നിയമമുള്ളതുകൊണ്ടു കൊല ഗവർമ്മെന്റു സമ്മതിക്കയാണു ചെയ്യുന്നതു്. ഈ വിശ്വാസം ജനങ്ങളിൽ പരന്നുകഴിഞ്ഞാൽ, നല്ല വിവേകമില്ലാത്ത ആളുകളുടെയിടയിൽ കൊല്ലുന്നതിനു വിരോധമില്ലെന്ന മനസ്ഥിതി പരക്കുവാൻ ഇടയാണു്. ഇതെല്ലാം വിചാരിച്ചാണു് ചില പരിഷ്കൃതരാജ്യങ്ങളിൽ കൊലപാതകം പാടില്ലെന്നു തീർച്ചയാക്കീട്ടുള്ളതു്. ബഹുമാനപ്പെട്ട എറണാകുളംമെമ്പർ അവർകൾ പറഞ്ഞതു്

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ഇതിനു ഇപ്പോൾ കാലമായിട്ടില്ല എന്നാണു്. മരണശിക്ഷ തീരെ നിറുത്തുവാനുള്ള കാലമുണ്ടാകുമെന്നു അദ്ദേഹവും സമ്മതിക്കുന്നുണ്ടു്. ഇതിനുമുമ്പു ഒരിക്കൽ ഈ നിശ്ചയം ഇവിടെ കൊണ്ടുവന്നപ്പോൾ അതു് തള്ളിക്കളഞ്ഞു എന്നാണു തോന്നുന്നതു്.

മിസ്റ്റർ തോമസ്സ് മാത്തൂരാൻ (*Government Advocate and Law Officer*).— തള്ളിക്കളഞ്ഞു.

മിസ്റ്റർ കെ. അയ്യപ്പൻ (*Ezhuvas South*).— നിങ്ങളെപോലെയുള്ള ആളുകളിരിക്കുമ്പോൾ എങ്ങിനെ തള്ളിക്കളയാതിരിക്കും. (ചിരി) കൊച്ചിയിലെ പൊതുജനങ്ങളുടെ മനസ്സാക്ഷിയുടെ ധർമ്മബോധം അനുസരിച്ചു ഈ നിശ്ചയം കൊണ്ടുവന്നതിനുശേഷമുള്ള കാലത്തിനിടയിൽ വേണ്ടിടത്തോളം വളർന്നിട്ടുണ്ടോ എന്നു—ഹിറ്റ്ലർ മുസോളിനി മുതലായവർ ഘാതകതത്വം ആയുധമായി എടുത്തിരിക്കുന്ന കാലത്തിനുമുമ്പു ജർമ്മനിയിലും ഇറ്റലിയിലും വളർന്നതുപോലെയുള്ള ഒരു അനുകരണവളർച്ച നമ്മുടെ രാജ്യത്തുണ്ടോ എന്നു—പരീക്ഷിക്കുവാൻ വേണ്ടിയാണു എന്റെ സ്നേഹിതൻ ഇതു ഇവിടെ കൊണ്ടുവന്നിട്ടുള്ളതു്.

ഒരു സംഗതി ഇവിടെ പറയുവാനുണ്ടു്. ബ്രാഹ്മണർക്കു മരണശിക്ഷ പാടില്ല എന്ന ഒരു നിയമമുണ്ടായിരുന്നു. അതുകൊണ്ടു ബ്രാഹ്മണരുടെയിടയിൽ കൊലപാതകം കൂടീട്ടുണ്ടോ? അതു മരണശിക്ഷ ആർക്കും പാടില്ലെന്നുപറഞ്ഞാൽ ഘാതകന്മാർ വർദ്ധിക്കാൻ ഇടയില്ലെന്നു തെളിയിക്കുന്നു.

ഡാക്ടർ എ. ആർ.മേനോൻ (*Pallippuram*).— ബ്രാഹ്മണർ വെജിറിയൻസ് ആണു്.

മിസ്റ്റർ കെ. അയ്യപ്പൻ (*Ezhuvas South*).— ലോകത്തിലുള്ള പലേ മഹാന്മാരും ഗോമാംസം ഭക്ഷിക്കുന്ന ആളുകളാണു്. നമ്മുടെ ഉപനിഷത്തുകളെല്ലാംതന്നെ ഗോമാംസത്തിന്റെ സത്താണു്. ഹിറ്റ്ലർ മുസോളിനി ഇവരെല്ലാം വെജിറ്റേറിയൻസാണു്. വളരെ ദയാലുവായ ക്രിസ്തുതന്നെ മത്സ്യമാംസങ്ങൾ ഭക്ഷിച്ചിരുന്നു.

മിസ്റ്റർ എ. വി. മൂത്തേടൻ (*Chalakudi*).— ക്രിസ്തുവിനെ വിശ്വസിക്കുന്നുണ്ടോ?

മിസ്റ്റർ കെ. അയ്യപ്പൻ (*Ezhuvas South*).— ക്രിസ്തുവിനെ വിശ്വസിച്ചിട്ടവേണോ ഈ കാര്യം പറയുവാൻ. ബൈബിളിൽ പറയുന്ന ക്രിസ്തു ഉണ്ടായിട്ടുണ്ടെങ്കിൽ അദ്ദേഹം വളരെ ദയാലുവായിരുന്നു.

ഞാൻ പലപ്പോഴും പറയാറുള്ള മാനസിക ഇക്കിളി കൊച്ചിഗവമ്മെൻറിനെ പൊതുവെ ബാധിക്കാതിരുന്നാൽ ഇതു പാസാക്കുവാൻ യാതൊരു പ്രയാസവുമില്ല. ഇൻഡ്യാഗവമ്മെൻറു ഇതു സ്വീകരിച്ചിട്ടില്ല, മൈസൂർഗവമ്മെൻറു ഇതു സ്വീകരിച്ചിട്ടില്ല, തിരുവിതാംകൂർഗവ

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മ്മൻറു ഇതു സ്വീകരിച്ചിട്ടില്ല എന്നൊന്നും പറയാതെ ഈ നിയമം ഇവിടെ പാസാക്കികഴിഞ്ഞാൽ അന്നമുതൽതന്നെ ഇവിടെ കൊലപാതകം കുറഞ്ഞുതുടങ്ങും. അതുകൊണ്ട് ഈ നിശ്ചയത്തെ ഞാൻ വളരെ സന്തോഷത്തോടുകൂടി പിൻതാങ്ങുന്നു.

Mr. K. S. Manickam *(Irinjalakkuda).*—Mr. President, Sir, what little deterrent effect this provision in the Statute Book has, to my mind, it appears that that effect has been completely removed by the trend of judicial opinion of our courts. It is long time since a case of hanging has been resorted to as a result of the judgment of the Highest Court in the land. The very scaffold which is sued for hanging has been out of repair and it has been repaired only very recently and for the information of the Hon'ble Members I may say that it was done by a Brahmin who died after repairing it. So much so if we are to judge from the trend of judicial decision of our Courts, to my mind it appears that this law is only an ornament in the Statute Book. The earlier we get rid of it, the better for us and it will be a step in the onward march of civilization. In olden days when murderers were rampant in order to create a deterrent feeling in the minds of the people the bodies of the persons who were hanged as a consequence of the orders of the Court were being exhibited in public places so that people might come across such bodies and the very sight of those bodies may create a fear in their minds and prevent them from doing such acts. We have passed such days. Murders are now being committed and there are instances where persons who are guilty of such murders are hanged in close secrecy. If my information is correct, persons who are guilty of this crime are being hanged before day break. Persons are not allowed to witness this. If anything of such a nature is intended to create feelings which will prevent people from resorting to this heinous crime in future then, why cannot it be done in the public? The very fact that these are done in private is only to respect this provision in the statute book in very very extreme cases. Though my experience in Court is very little when compared to that of my Hon'ble friend the member for Ernakulam South, I have come across instances where the Judges have not given the maximum sentence even in cases of deliberate murder. I have heard of a judge in the Anjikaimal District Court in olden days who swooned while giving out his judgment. I have also come across judges who after passing the death sentence go on to the next item in as jovial a manner so that people might mistake whether the judgment has really condemned a prisoner to be hanged. The fact that the judges of our court are hesitating to award

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this sentence, and the fact that hanging is very rare in our country are reasons which will surely warrant the expulsion of this provision from the statute book. The expulsion of such a provision from the Statute Book would really take us on to the onward march of civilization. This will also reveal to outsiders that our State has become so cultured and enlightened that murders are far and few between and that there is no necessity to create this deterrent effect. If we are able to create a reformative effect and if our idea is to create a reformative effect as it ought to be then it is enough if the courts of law award rigorous imprisionment to people condemned of murder and it is enough to deter and prevent other people from committing such offences. I think it is better that we take away this provision of law from the Statute Book which does not speak very highly of the enlightenment of the Country.

Mr. P. Kumaran Ezhuthassan *(Wadakkancheri)*.— Sir, this is a Resolution which had engaged the attention of this Hon'ble House on two previous occasions. This House is seen to have discussed this identical resolution in the year 1929 and on a poll being taken it had to be lost because of the weighty numbers of the Government benches. The non-official division was 12 against 12, i. e., there was an equal division on the non-official side. Things improved very much indeed with the lapse of 24 months when in 1931 I had the privilege of tabling and discussing a similar motion. A decided improvement was noticed in the attitude of non-official members. Then the vote was 11 against 16 inclusive of 11 Government members or in other words the non-official division was 11 against 5. Now the discussion has come again 6 years hence and surely a unanimous vote on this question from the non-official side is indeed what we could have anticipated; but unfortunately there has been some dissentient voice raised by the Hon'ble Member for Ernakulam for examble, who from his experience has stated the necessity for the retention of the death sentence in the statute book. His reasons are that the death sentence is one which has the deterrent effect upon the public mind and has therefore to be retained. It works as a check upon the propensity on the part of the public to commit murder, says my Hon'ble friend. He was telling in this House that if the murderously minded man is sure that his life, which to him is as precious as the life of the man who has been murdered, also will be taken away if he commits an act of murder, certainly that will check him and on the other hand if the rule of law is that there is no death punishment which will be meted out to a murderer then

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that gives him an incentive to commit murder. That is the sole argument advanced. Now a tooth for a tooth and an eye for an eye is a relic of barbarism and if a man has cost the life of another and the judges have been able to find that A has committed murder of B then according to my Hon'ble friend the life of A has to be taken for the fact of A having murdered B. Now I ask in all seriousness whether for the murder of B by A the death sentence imposed on A is any punishment at all to him. Is there any one who will say that A is punished? I believe not.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—Most certainly, A is punished when he is hanged.

Mr. P. Kumaran Ezhuthassan *(Wadakkancheri).*—I am sorry for that 'certainly'. It is certainly the very opposite of it. I fail to see how it can be a punishment to A for the murder of B.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—Not my mistake.

Mr. P. Kumaran Ezhuthassan *(Wadakkancheri).*—Certainly not my mistake either. You have the advantage of being on the treasury bench and your position is safe. I repeat that for the murder of B if A's life is taken away, it can never be a punishment to him. Where is the suffering?

Mr. P. J. George *(Joint Secretary to Government).*—Till his consciousness disappears it is a punishment for him.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—I think it is a pleasure to him.

Mr. P. Kumaran Ezhuthassan *(Wadakkancheri).*—It is a matter of indifference to him. I maintain that if I am allowed time I will substantiate that to A it is no punishment at all. It is a punishment not to A, the murderer, but to his relatives who look to him for their support. It is a punishment not to the man who has committed the murder but to his relatives.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—Suppose he has no relatives.

Mr. P. Kumaran Ezhuthassan *(Wadakkancheri).*—Suppose the heaven is coming down and you are not there.

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Why do you suppose? I ask you the question whether for the murder of B the hanging of A is a punishment to him? I maintain that it is not and you maintain it is. I submit, Sir, that the punishment of hanging meted out to a murderer is no punishment to him but it is a punishment to his relatives who are deprived of their mainstay. Now, Sir, if this proposition is accepted I submit that it will be a punishment and a palliative to improve him of his bad ways.

The proposition before the House is to the effect that instead of this barbarous system of hanging, the Government will be pleased to substitute it by long term life imprisonment. A long term life impisonment under the conditions obtaining today is certainly not conducive to improve the prisoner. Life imprisonment on improved conditions, instead of keeping him in desolation, where he can be reformed by an improved method of conducting the jail will certainly be an advantage to the murderer who will come back again to society as a reformed man having no tendencies and no mind to commit such heinous crimes in future. This is the proposition that is before the House and the spirit contained in the resolution. If precedents are wanted for taking the step in that direction, there are plenty of them. Many instances of many countries have been quoted by the Hon'ble Member who moved this Resolution. I hope Government will not say that those countries which have done away with this system are less enlightened. They are very civilised countries and from experience they have found it necessary, proper and justifiable to do away with hanging. Those countries have also not fared the worse by doing away with hanging.

Now, Sir, other arguments against the motion have been advanced on the former occassion. It has been stated that there is no harm in retaining this in the Statute Book because in deciding cases of murder the judges have tried their level best to get out of this provision of law and only give a lesser sentence. Why should you trouble our good judges to wiggle like that? There is no necessity. If you do away with this provision of law the judges can without any hesitation give life imprisonment in extreme cases. Then again there is also this danger if this provision of law is not taken away. There is the possibility of the judgment of the Judge going wrong. At times persons may deliberately give evidence against a certain accused with only the malicious intention of ruining him. I do not say that it is a normal thing. Such possibilities may arise, and under the

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circumstances the judge will have no alternative than to sentence him to death. If you agree with me in thinking that hanging is no punishment why mete it out to him? Your object is to give him punishment. I say that the other is a punishment and if you insist on giving a severe punishment give him rigorous imprisonment. A reference was made here regarding judges and their attempts to give lesser punishments. Then why do you want to retain this law and allow the judges once in a way to do this? I am not blaming our judges. They are trying their level best and I know that they have succeeded. I am prepared to admit it. But is there not the possibility, a remote possibility, at any rate of their once in a way going wrong and if eventually circumstances so transpire that the judge who has ordered the hanging of A comes to know that his judgment was wrong, look at the position of that unfortunate Judge. What can he do to undo the mischief that he has committed. Look at the awkward situation in which our Judges are placed. Do you mean to say that such a possibility can never come to pass?

So what I submit, Sir, is this. According to me the passing of death sentence on the accused is no punishment at all to him while long term imprisonment is a punishment and the punishment of hanging being a punishment not to the accused but to the relatives, his long term imprisonment under improved conditions may be substituted for hanging. It is only desirable that the provision for death sentence is removed from the Statute Book. It is just possible that there is a unanimity of opinion on the non-official side and if Hon'ble Members on the treasury benches are allowed to vote according to their conscience, I am sure to have a clean majority, if not a unanimous vote, on this resolution.

Probably I can expect one argument that may be advanced by the Government and that is with regard to the grading of punishments and that was once attempted. If for murder a long term imprisonment is the punishment then for other offences of a lesser degree what should be the punishment? The argument last time advanced by the Government was that long term imprisonment is a punishment awarded for being a thug. If long term imprisonment is the punishment awarded for being a thug, is it enough if you mete the same punishment to the murderer and if really that is the difficulty of the Government re-grade it, by amending the Penal Code in such a way as to give lesser punishments to the other offences reserving long term imprisonment for murder thereby achieving

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the very object of punishment, namely reformation. Reformation is the object of punishment. Let long term imprisonment be the maximum punishment for a murderer. You can re-grade the other punishments for the other offences. If necessary you can appoint a Law Commissioner for that. But please do away with hanging which is judicial murder.

The discussion was not over when the House rose for the day at 5 p. m.

B. V. KRISHNANKUTTY MENON,

Secretary to the Council.

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